In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1094

RUSSELL HAROLD SITTON and BARBARA SITTON,
PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON "MOTION TO DEFER CERTIORARI AND REFER CASE TO THE FIFTH CIRCUIT FOR ADDITIONAL FINDINGS" AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-11 to A-20) is reported at 413 F. 2d 1386. The judgment of the district court (Pet. App. A-8 to A-10) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 30, 1969, and a petition for rehearing was

denied on October 22, 1969. The petition for a writ of certiorari was filed on January 20, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a judgment recovered by the United States on account of payments under a Veterans Administration home loan guaranty bears interest at the rate established by the state for judgments, or at the rate established by the Administration for the guaranteed loan.

We do not discuss the other questions raised in the petition, since they do not concern the United States.

STATUTES INVOLVED

28 U.S.C. 1961 provides in relevant part:

> Interest shall be allowed on any money judgment in a civil case recovered in a district court. * * * Such interest shall be calculated from the date of the entry of the judgment, at the rate allowed by State law.

38 U.S.C. 1803(c)(1) provides in relevant part:

> Loans guaranteed or insured under this chapter shall be payable upon such terms and conditions as may be agreed upon by the parties thereto, subject to the provisions of this chapter and regulations of the Administrator [of the Veterans Administration] issued pursuant to this chapter, and shall bear interest not in excess of such rate as the Administrator * * * may from time to time find the loan market demands; * * *.

STATEMENT

Petitioners purchased a home in Mesquite, Texas with a loan partially guaranteed by the Veterans Administration. In 1962 they agreed to trade it for another house, with the grantee to assume the balance still due. Subsequently the loan became delinquent, foreclosure ensued, and the Veterans Administration as guarantor paid the deficiency (Pet. App. A-11 - A-12). The Veterans Administration then wrote to petitioners informing them that they must pay the deficiency with 4% interest, but that they could request a waiver if the debt arose without their fault and payment would impose a hardship on the family (Pet. App. A-54).

Petitioners did not seek a waiver, but instead filed in a Texas state court an action to which the United States was not a party, asserting that their original grantee had conspired with the title insurance company, real estate agent and others to erase their deed and substitute as grantee a poor credit risk, without petitioners' knowledge. They sought actual and punitive damages for emotionally induced physical injuries which resulted from efforts to collect the balance due from them after the substituted grantee defaulted. The jury returned a verdict in petitioners' favor for $90,500, finding specially that the deed was altered pursuant to a conspiracy. However, the trial court entered judgment for the defendants notwithstanding the verdict, on the ground that the defendants were entitled to judgment as a matter of law (Pet. App. A-41 - A-47). The Texas Court of Civil Appeals

affirmed, finding that petitioners had not adduced evidence sufficient as a matter of law to show a conspiracy, and the Supreme Court of Texas denied a writ of error (Pet. App. A-48 - A-63). Petitioners then sought certiorari in this court, asserting that the trial court's action in entering judgment n.o.v. violated the 7th Amendment and thus denied them the due process of law guaranteed them by the 14th Amendment. Certiorari was denied. *Sitton* v. *American Title Co. of Dallas*, 385 U.S. 975, rehearing denied, 385 U.S. 1033.

There the matter rested until the Veterans Administration brought suit against petitioners in federal district court to recover the $488.66 due on the deficiency. Petitioners then made third-party claims against all the defendants in the state court action, asking the district court to enter judgment for petitioners on the original jury verdict or, alternatively, to grant them a new jury trial in federal court (Pet. 12). The third-party defendants answered, denying liability and asserting the state court judgment as res judicata. The district court entered summary judgment for the United States, with interest at 6% from the date of judgment, and dismissed the third-party complaint (Pet. App. A-8 - A-10).

The Court of Appeals for the Fifth Circuit affirmed the judgment against petitioner Russell Sitton, including interest at a rate of 6%, but reversed as to his wife because it considered her protected by the Texas law of coverture. The Court also affirmed the dismissal of the third-party action.

ARGUMENT

1. Petitioners do not contest the entry of summary judgment in favor of the United States on the mortgage deficiency, except to attack the rate of post-judgment interest set by the Court. In this connection they contend that 38 U.S.C. 1803(c)(1), which authorizes the Veterans Administrator to set interest rates on home loans, was intended by Congress to require that the same rate of interest be set by courts on deficiency judgments entered against veterans who default on their loans. There is nothing in this statute or its legislative history to show any such intent; to the contrary, as the Fifth Circuit pointed out, post-judgment interest in federal courts is governed by 28 U.S.C. 1961, which specifically provides that the rate shall be the same as that allowed in the relevant state court. Here that rate was 6% per annum. Vernon's Tex. Civ. Stat., Title 79, Art. 5072. Plainly the grant of a petition for certiorari to review the judgment in favor of the United States is unwarranted.

2. Since the United States is not involved in the third-party claims, we express no views as to the correctness of their disposition below.

CONCLUSION

The petition for a writ of certiorari and motion to refer the case back to the Fifth Circuit, should be denied insofar as they relate to the United States' claim against petitioners.

Respectfully submitted.

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